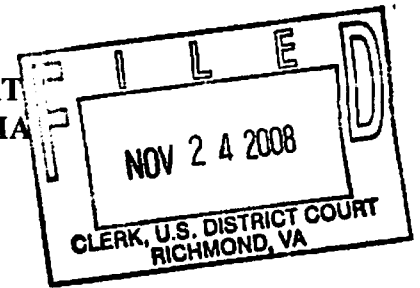


IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division



**SAMUEL LEE RUSHING,**

Plaintiff,

v.

Civil Action No. **3:08CV556**

**ERNEST TONEY, *et al.*,**

Defendants.

**MEMORANDUM OPINION**

By Memorandum Order entered on September 15, 2008, the Court conditionally docketed Plaintiff's 42 U.S.C. § 1983 action. At that time, the Court directed Plaintiff to submit a statement under oath or penalty of perjury that:

- (A) Identifies the nature of the action;
- (B) States his belief that he is entitled to relief;
- (C) Avers that he is unable to prepay fees or give security therefor; and,
- (D) Includes a statement of the assets he possesses.

*See* 28 U.S.C. § 1915(a)(1). The Court provided Plaintiff with an *in forma pauperis* affidavit form for this purpose.

Additionally, the Court directed Plaintiff to affirm his intention to pay the full filing fee by signing and returning a consent to the collection of fees form. The Court warned Plaintiff that a failure to comply with either of the above directives within thirty (30) days of the date of entry thereof would result in summary dismissal of the action.

Plaintiff has not complied with the orders of this Court. Plaintiff failed to return a completed *in forma pauperis* affidavit form and a consent to collection of fees form. As a result, he does not qualify for *in forma pauperis* status. Furthermore, he has not paid the statutory filing

fee for the instant complaint. *See* 28 U.S.C. § 1914(a). Such actions demonstrate a wilful failure to prosecute. *See* Fed. R. Civ. P. 41(b). Accordingly, this action will be DISMISSED WITHOUT PREJUDICE.

It is so ORDERED.

Date Nov 24 2008  
Richmond, Virginia

/s/  
**Richard L. Williams**  
**United States District Judge**